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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/949,525 10/14/97 WIENER

M ENT970827-1

EXAMINER

LM01/0307

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ART UNIT	PAPER NUMBER

2767

DATE MAILED:

03/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/949,525

Applicant(s)
Michael J. Wiener And Josanne M. Otway

Examiner
Douglas Meislahn

Group Art Unit
2767

☒ Responsive to communication(s) filed on Jan 3, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment filed 03 January 2000 that amended claims 1, 14, and, 21. The amendment also states that claim 26 has been amended. There is no amendment to claim 26 in applicant's outstanding response. The amendments have overcome the rejection based upon 35 USC 112 of claims 1-8 and 14-26.

Response to Arguments

2. Applicant's arguments filed 03 January 2000 have been fully considered but they are not persuasive.

The portions of the present invention that applicant argues are lacking in Dolphin are present in other references cited in the rejection, Lewis in particular. The portions of the present invention that applicant argues are lacking in Lewis are present in other references cited in the rejection, Dolphin in particular.

3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the added flexibility of keys with selectable expiration times as taught by Dolphin provides a reason to combine Dolphin and Lewis.

Applicant's argument that Lewis is directed to a different problem ignores that Lewis is used primarily to teach a public key cryptosystem in which keys are replaced. The examiner does not believe that the improvements that Lewis presents are used in the rejection of the present invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The first step listed in claims 1, 9, 14, and 21 is vague and indefinite. Applicant had suggested reading the claims in view of the specification. However, the examiner does not wish to constrict his view of the invention by solely using the exemplary embodiment. This leaves only line 26 of page 3 through line 2 of page 4 for the examiner to rely upon. The examiner is unsure what "... that is selectable on a per client basis ..." modifies. Also, the examiner is not clear on whether the selectable expiry data includes selectable private key expiry data. In the phone conversation of 22 March 1999, Applicant and the examiner had discussed using commas to remedy these ambiguities.

Claims 10-13 depend from claim 9 and therefore inherit its deficiencies.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-4, 6-18, 20-24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolphin (5457746) in view of Lewis (5761306).

As can be seen from figure 9 of Dolphin, selectable key expiration and start dates are known in the art of key generation. Figure 9 is a representation of a user interface. It is inherent that the expiry data is stored and associated with the key with which the data is used. Dolphin's system is designed to be used in conjunction with pay-per-use media, which means that it would have the ability to exclude key updates on a per client basis. Elements 81 and 82 of figure 13 demonstrate the idea of requesting from and

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receiving a key that is generated by a multi-client manager unit. Dolphin does not say specifically that the system is for public key updates. Lewis' first and second figures show a public key update system. As can be seen from the first figure, the two clients have different keys which are sent from a server. Official notice is taken that public key certificates that indicate validity periods for keys are old and well-known. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the selectable validity period data of Dolphin to the public key update system of Lewis in order to increase the flexibility of the key update system.

9. Claims 5, 19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolphin and Lewis as applied to claims 1, 14, and 25 above, and further in view of applicant's admitted prior art.

Dolphin in view of Lewis teaches the selection of key validity periods on a per client basis. She does not specify a time frame in which a client would request key updates. In lines 14 through 19 of page 2, applicant discusses a conventional public key system in which keys have a fixed default period that is "... generally a fixed percentage or a total key lifetime" Official notice is taken that fixed length renewal periods are old and well-known. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to set key update periods that are based on both a fixed number of days and a percentage of a key's lifetime. This method provides flexibility by giving clients who have keys that have either extremely long or extremely short lifetimes two options as to when to update their key. For

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example, if a client had a ten-day key, and the renewal time percentage was ten, the client would only have one day to renew the key and could easily miss this window as a result of a weekend. However, if the key were renewable either during the final ten percent of the key's lifetime or during the final three days of the key's lifetime, the exemplary client would not risk missing an update because of a weekend.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas J Meislahn whose telephone number is (703) 305-1338. The examiner can normally be reached between 9AM - 6PM, except for every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tod Swann can be reached on (703) 308-7791. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-9051 for regular communications and (703) 308-9052 for After Final communications.

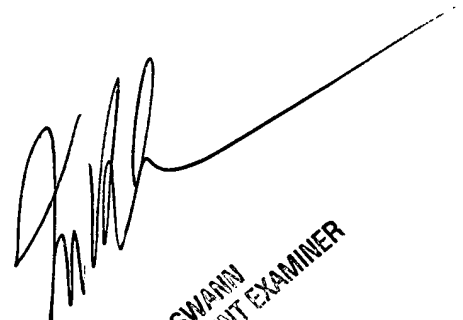
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Douglas J Meislahn
Examiner
Art Unit 2767

DJM

DJM

March 2, 2000


TOD R. SWANN
SUPERVISORY PATENT EXAMINER
GROUP 2767